

Howard M. Levine, OSB No. 800730
Timothy A. Solomon, OSB No. 072573
SUSSMAN SHANK LLP
1000 SW Broadway, Suite 1400
Portland, OR 97205-3089
Telephone: 503-227-1111
Facsimile: 503-248-0130
Email: hlevine@sussmanshank.com

Attorneys for Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re)	Case No. 11-37108-rld11
ERP-Link Corp.,)	DEBTOR'S MOTION FOR ORDER:
)	(A) ESTABLISHING NOTICE AND
Debtor.)	BIDDING PROCEDURES IN
)	CONNECTION WITH A
)	CONTEMPLATED SALE OF ASSETS
)	TO GIMMAL HOLDINGS LLC; AND
)	(B) SCHEDULING AN AUCTION

ERP-Link Corp., the debtor and debtor in possession in this case (the "Debtor"), hereby moves the Court for the entry of an order (1) approving notice and bidding procedures as set forth on the proposed Bid Procedures Order, a copy of which is attached hereto as Exhibit A; and, (2) in the event competing bids are received, scheduling an auction in connection with the contemplated sale of substantially all of the assets of the estate free and clear of liens, claims, interests, and encumbrances to Gimmel Holdings LLC ("Purchaser"). This motion (the "Bidding Procedures Motion") is based in part on the terms and requirements of the Asset Purchase Agreement dated August 16, 2011, signed by the Debtor and the Purchaser. In support of the Bidding

Page 1 of 4 - DEBTOR'S MOTION FOR ORDER: (A) ESTABLISHING NOTICE AND BIDDING PROCEDURES IN CONNECTION WITH A CONTEMPLATED SALE OF ASSETS TO GIMMAL HOLDINGS LLC; AND (B) SCHEDULING AN AUCTION

1 Procedures Motion, the Debtor states as follows:

2 **JURISDICTION**

3 1. This Court has jurisdiction over this case under 28 USC §§ 157 and 1334.
4 Venue of this case is properly in this district under 28 USC §§ 1408 and 1409. This
5 matter is a core proceeding under 28 USC § 157(b). The statutory predicates for the
6 relief requested include sections 105(a) and 363 of Title 11 of the United States Code
7 (the "Bankruptcy Code").

8 **FACTUAL BACKGROUND**

9 2. On August 17, 2011, the Debtor filed a voluntary petition for relief under
10 Chapter 11 of the Bankruptcy Code. The Debtor remains as debtor in possession. No
11 Trustee or Creditors Committee has been appointed.

12 3. On August 16, 2011, the Debtor signed an Asset Purchase Agreement
13 (the "Agreement") with Purchaser, pursuant to which the Debtor will sell to Purchaser
14 (or other successful bidder) substantially all of the assets of the estate. A copy of the
15 Agreement is attached hereto as Exhibit B. Anderson Declaration, ¶ 29.

16 4. Pursuant to the Agreement, as requested by the Purchaser, and in the
17 interest of ensuring a fair and clear notice and sale procedure, it is necessary and
18 desirable to obtain an order from this Court setting forth the process by which
19 substantially all of the Debtor's assets will be sold. *Id.*, ¶ 30.

20 **PROPOSED SALE TRANSACTION**

21 5. The Debtor proposes to sell substantially all of its assets to Purchaser,
22 subject to the terms of the Agreement. The Debtor has received inquiries from other
23 potential purchasers who have expressed an interest in possibly acquiring assets of the
24 Debtor. *Id.*, ¶ 31.

25 6. A copy of the Proposed Notice of Intent to Sell Real or Personal Property,
26

Page 2 of 4 - DEBTOR'S MOTION FOR ORDER: (A) ESTABLISHING NOTICE AND
BIDDING PROCEDURES IN CONNECTION WITH A CONTEMPLATED SALE OF
ASSETS TO GIMMAL HOLDINGS LLC; AND (B) SCHEDULING AN AUCTION

1 Compensate Real Estate Broker, and/or Pay any Secured Creditor's Fees and Costs;
2 Motion for Authority to Sell Property Free and Clear of Liens is attached hereto as
3 Exhibit C.

4 7. A summary of certain material terms of the Purchase Agreement is set
5 forth below.¹

6
7 Assets to be Sold: Substantially all of the Debtor's assets (the
"Property").

8 Purchase Price: a) \$200,000.00, plus
9 b) 85% of the face amount of verified A/R under
10 60 days of invoice date, not to exceed \$120,000 (the
11 "A/R Price") for all of Debtor's A/R. [Based on 7/19/11
balance sheet, that would yield an A/R Price of
approximately \$100,039]

12 Closing: Closing will occur on the earlier of no time later than
13 the fifth Business Day, following the date on which the
14 Sale Order has become a Final Order, or October 15,
2011.

15 8. Attached as Exhibit D to this Bidding Procedures Motion is a proposed
16 Motion to Assume and Assign Executory Contracts and Unexpired Leases.

17 **REQUEST FOR APPROVAL OF PROPOSED NOTICE AND BIDDING**
18 **PROCEDURES**

19 9. The Debtor requests approval of the proposed Notice and bidding
20 procedures. The Debtor further requests the Court schedule a hearing to consider the
21 Debtor's request for approval of the contemplated sale of the Property.

22 10. The Debtor has provided notice of this Bidding Procedures Motion and the
23 proposed Bidding Procedures Order to the 20 largest unsecured creditors, its secured

24 _____
25 ¹ The following constitutes a summary of the Agreement that is intended solely for ease
26 of reference. The terms of the Agreement shall control in all regards and for all
purposes.

1 creditor, the Office of the United States Trustee, and all individuals or entities which
2 have contacted the Debtor to express an interest in purchasing the Property and their
3 known counsel. No unsecured creditors' committee has yet been appointed in this
4 case

5 **WHEREFORE**, the Debtor respectfully requests that the Court enter the
6 Proposed Bidding Procedures Order, and grant such other and further relief as this
7 Court deems necessary and proper.

8 DATED this 17th day of August, 2011.

9 SUSSMAN SHANK LLP

10 */s/ Howard M. Levine*

11 By _____
12 Howard M. Levine, OSB No. 800730
Timothy A. Solomon, OSB No. 072573
Attorneys for Debtor and Debtor-in-Possession

13 F:\CLIENTS\21470\001\PLEADINGS\P-MOTION FOR ORDER AUTHORIZING BID PROCEDURES (FINAL FORM).DOC
14
15
16
17
18
19
20
21
22
23
24
25
26

Page 4 of 4 - DEBTOR'S MOTION FOR ORDER: (A) ESTABLISHING NOTICE AND
BIDDING PROCEDURES IN CONNECTION WITH A CONTEMPLATED SALE OF
ASSETS TO GIMMAL HOLDINGS LLC; AND (B) SCHEDULING AN AUCTION